

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DOTTIE BECK, : Case No. 1:00cv00373
: (Judge Weber)
Plaintiff, :
: **AMENDED/CORRECTED**
vs. : **MOTION FOR RELIEF FROM**
: **JUDGMENT UNDER FRCP 60(b)**
BEVERLY WEST, et al. :
: Defendants. :

Comes now Plaintiff, by and through counsel, pursuant to FRCP 60(b) and respectfully moves the Court for a relief from judgment (Order) previously entered in this case on September 10, 2002, and to enter of record the attached Settlement Agreement and Permanent Injunction between Plaintiff and Defendant, Beverly West. This "Amended/Corrected" Motion for Relief from Judgment, originally filed September 5, 2003 (Docket Nos. 65/66) is being re-filed as the Motion did not contain the appropriate "electronic signature" pursuant to the Court's Electronic Filing Policies." Therefore, Plaintiff re-files said Motion with the appropriate electronic signature.

s/ Daniel J. Temming
Daniel J. Temming Bar Number: 0030364
Attorney for Plaintiff
ROBBINS, KELLY, PATTERSON & TUCKER
7 West Seventh Street, Suite 1400
Cincinnati, Ohio 45202
Telephone: (513) 721-3330
Fax: (513) 721-5001
E-mail: dtemming@rkpt.com

MEMORANDUM

This case was commenced for, *inter alia*, copyright infringement of various works of Plaintiff, Dottie Beck. The two named Defendants are Beverly West and Vincent Smith, former employees of Dottie Beck.

After various procedural matters, the parties mediated their dispute on August 26, 2002.

A Joint Status Report to this Court on August 27, 2002 advised that a settlement had been reached between Plaintiff and Defendants.

On September 10, 2002, this Court issued an "Order" dismissing the case but giving either party 60 days to reopen the matter on the Court's docket if the appropriate settlement documents were not consummated by that time.

The appropriate settlement documents were drafted. However, they were not signed by Defendant Vincent Smith because defense counsel lost contact with Mr. Smith sometime prior to the mediation.

The appropriate settlement documents were not returned to Plaintiff's counsel by Defendants' counsel until after the 60 day "window" in the Court's September 10, 2002 Order, for reopening the case.

A conference was held with this Court on June 27, 2003 between and among counsel and the parties, absent Mr. Smith. The Court advised that it wanted to see the settlement consummated, but would not enforce it against Mr. Smith since his signature was absent. The Court recommended new settlement documents be prepared and signed by Plaintiff, Dottie Beck, and Defendant, Beverly West, without Mr. Smith's signature, and presented to the Court along with this FRCP 60(b) Motion.

FRCP 60(b) provides that, on Motion, the Court, on such terms as are just, may relieve a party from a judgment or order due to mistake, inadvertence, surprise, or excusable neglect.

Because of inadvertence, mistake, or excusable neglect, the parties' originally signed Settlement Agreement and Permanent Injunction between Dottie Beck and Beverly West was not presented to the Court within the 60 day window, as Defendants' previous counsel was unable to locate Mr. Smith to obtain his signature on the document. Following the Court's advice at the June 27, 2003 conference, an identical Settlement Agreement and Permanent Injunction has been prepared that does not require Mr. Smith's signature.

Attached hereto as Exhibit "A" is a revised Settlement Agreement and Permanent Injunction, which has been signed by Plaintiff, Dottie Beck, and Defendant, Beverly West, said signatures being affixed since the June 27, 2003 settlement conference.

Therefore, Plaintiff moves the Court for relief from her September 10, 2002 Order of Dismissal; that the Court reopen the matter on its docket, and issue the attached Settlement Agreement and Permanent Injunction, which has been consented to by Plaintiff, Dottie Beck, and Defendant, Beverly West.

s/ Daniel J. Temming

Daniel J. Temming Bar Number: 0030364
Attorney for Plaintiff
ROBBINS, KELLY, PATTERSON & TUCKER
7 West Seventh Street, Suite 1400
Cincinnati, Ohio 45202
Telephone: (513) 721-3330
Fax: (513) 721-5001
E-mail: dtemming@rkpt.com

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2003, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participant: Beverly West, P. O. Box 13312.

s/ Daniel J. Temming

Daniel J. Temming Bar Number: 0030364
Attorney for Plaintiff
ROBBINS, KELLY, PATTERSON & TUCKER
7 West Seventh Street, Suite 1400
Cincinnati, Ohio 45202
Telephone: (513) 721-3330
Fax: (513) 721-5001
E-mail: dtemming@rkpt.com

P:\RKPT\Data\wp\DAN\L2561 0001 (Amended Motion for Relief).doc